IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 8162 of 2005

Between:

G.Narasimha, s/o late Mallayya, Sanitary Jawan,
Municipal Corporation of Hyderabad, Ward No.12, Circle No.IV,
Tank Bund Road, Hyderabad.

..... PETITIONER

AND

1 The Commissioner, Municipal Corporation of Hyderabad, Tankbund Road, Hyderabad.
2 The Additional Commissioner (Admn.) Municipal Corporation of Hyderabad, Tankbund Road, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records connected with the Procs.459/B1/LWS/MCH/2004/676 dated 24/28-4-2004 of the 1st respondent as confirmed in judgment in OA No.5018 of 2004 with VMA 32/05 and CA 1145/04 dated 17-3-2005 and judicially review the same and quash the same as being arbitrary, illegal, unconstitutional, null and void by issuance of a Writ of Certiorari.

Counsel for the Petitioner: MR.Y.VENKAT SASTRY

Counsel for the Respondents: SMT.G.JYOTHI KIRAN

The Court made the following:

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ORAL ORDER: (per GB. J.)

The Writ Petition is filed assailing the order passed by A.P. Administrative Tribunal (for short Tribunal) in O.A.No.5018 of 2004 with VMA.No.32 of 2005 and CA.No.1145 of 2004, dated 7.3.2005.

2. The petitioner, who is the applicant before the Tribunal, challenged the order of suspension dated 24/28.4.2004 passed by the 1st respondent-Commissioner, Municipal Corporation of Hyderabad in proceedings No.459/B1/LWS/MCH/2004/676, dated 24/28.4.2004. The petitioner is working as Sanitary Jawan in Ward No.12, Circle No.IV of Municipal Corporation of Hyderabad. In connection with an offence alleged to have been committed by his son, the police also took the petitioner into custody and he was in judicial custody for nine days in regard to the alleged dowry harassment case relating to his son. It is also the case of the petitioner that the police has registered a case in crime No.423 of 2003 under Section 304-B IPC., in which he is also figuring as one of the accused. Therefore, taking into consideration the above facts, the authority passed the suspension order. Challenging the said order, the petitioner filed the above OA. It was the contention of the petitioner before the Tribunal that the suspension order is nothing to do with the discharge of his duties and therefore the authorities ought to have considered the matter as to how far it affects the public interest if he continues to discharge his duties and in support of his contention he relied upon the judgment of a Division Bench of this Court in P.RAJENDER vs. UNION OF INDIA AND ANOTHER[1] and the Tribunal without correctly noticing the proposition laid down by the Division Bench in the above Judgment, dismissed the OA filed by him. Against the said order, the present Writ Petition has been filed.

3. The learned counsel for the petitioner Mr.Y.Venkat Sastri submits that the proposition laid down by the Division Bench referred to above directly applies to the facts of this case. Admittedly in the instant case the employee was taken into custody on account of the offence alleged to have been committed by his son and therefore the suspension is in no way related to the discharge of the duties as a municipal employee. In such a case the authority ought to have seen as to how far

and to what extent the public interest may suffer if the petitioner is not placed under suspension.

4. On the other hand the learned Standing Counsel appearing for respondents submits that the order of the Tribunal cannot be said to suffer from any illegality or irregularity and therefore the Writ Petition is liable to be dismissed.

5. We have considered the respective contentions.

6. It is not in dispute that the petitioner is an employee in Municipal Corporation of Hyderabad and the suspension is not related to the discharge of his duties, but on the other hand it related to the offence alleged to have been committed by his son with regard to the dowry harassment case and in that regard a criminal case was also registered by the police against the son of the petitioner and the petitioner. It is also not in dispute that the petitioner was in judicial custody for nine days from 10.11.2003 to 19.11.2003. The suspension order was passed on the ground that he did not inform the authorities about his judicial custody for the aforesaid period. It is also brought to the notice of this Court that while granting bail to the petitioner, the criminal Court also observed that no incriminating circumstances exist against the petitioner for implicating him in crime No.423 of 2003. However, we are not concerned with the said observation. In any event the authority is required to consider while placing the petitioner under suspension with reference to the facts which are not connected with the discharge of his duties. That is what has been emphasized in the judgment referred to above, which reads as follows:

> "Suspension pending investigation, inquiry or trial is interim in nature. The aforementioned rule clearly suggests that an order of suspension is not required to be passed only because it will be lawful to do so. An application of mind on the part of the competent authority is *sine qua non* for passing such order of suspension. Before passing of an order of suspension, therefore, it is expected that the appropriate authority shall not only take into consideration the public interest but shall also take into consideration the relevant facts and attendant circumstances as to how far and to what extent the public interest may suffer if the delinquent officer is not placed under suspension".

Therefore, the facts in the above case are squarely apply to the facts of the present case. Under these circumstances, we are satisfied that the order of suspension is not sustainable and accordingly it is set aside, and consequently the order of Tribunal is also set aside.

7. In the result, the Writ Petition is allowed and the respondents are directed to reconsider the matter with reference to the observations made by the Division Bench referred to above and pass appropriate orders within a period of four (04) weeks from the date of receipt of a copy of this order. No costs.

(G.BIKSHAPATHY, J.)

21st April, 2005.

(P.S.NARAYANA, J.)

SSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Commissioner, Municipal Corporation of Hyderabad, Tankbund Road, Hyderabad.
2 The Additional Commissioner (Admn.) Municipal Corporation of Hyderabad, Tankbund Road, Hyderabad.

3 The Registrar, A.P. Administrative Tribunal, Hyderabad.

4 2 CD copies

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